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EX PARTE OR LATE FILED

September 8, 1999

Ex Parte

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

Re: CC Docket 96-98: Second Further Notice of Proposed Rulemaking in the Matter of the Local Competition Provisions in the Telecommunications Act of 1996

Dear Ms. Salas:

Today Ms. D. May and I, representing Bell Atlantic, talked by telephone with Mr. K. Dixon, Legal Advisor to Commissioner Powell, to discuss Bell Atlantic's position on the issue of unbundled switching in the above referenced proceeding.

The attached papers, previously filed with the Commission in this proceeding, were referenced during the discussion.

In accordance with Section 1.1206(a)(1) of the Commission's rules, an original and one copy of this notice are being submitted to the Secretary.

Sincerely,

Susanne Guyer

Attachments

cc: K. Dixon

Bell Atlantic Comments, CC Docket 96-98, May 26, 1999

"At a minimum, the Commission should not require incumbent carriers to unbundle local switching in any geographic area that already is being served by at least one competing carrier using its own switch

It is relatively easy to determine the location of competitors' switches that are already in service and the geographic areas that are now or will soon be served by those switches. First, when a competing carrier begins providing service with its own switch, it starts exchanging traffic with Bell Atlantic over interconnection trunks. Bell Atlantic is now exchanging billions of minutes of traffic with these competitors' switches, and that is proof that these switches are now providing service.

Second, the areas that are now or will soon be served by these switches can readily be determined from the blocks of 10,000 telephone numbers ("NXX codes") that have been assigned to them for use with their switches. A local service competitor that owns a telephone switch must acquire blocks of telephone numbers for that switch in order to provide local telephone service. The NXX codes that are assigned to a local competitor with its own switch are published in an industry document called the Local Exchange Routing Guide ("LERG")."

"The LERG provides the routing information for all other carriers to deliver calls to numbers that have been assigned to any competing carrier for use with its own local switch . . ."

"Even though a carrier does not have to start using an NXX code as soon as it is assigned, a carrier must return the the code if it is not activated to provide service within 6 months, Central Office Code (NXX) Assignment Guidelines at 17, §6.3.3 (Apr. 26, 1999). Hence, in the rate exchange areas where NXX codes have been assigned to competing carriers, those carriers are either now providing local service or will be doing so in the very near future."

A. Bell Atlantic Comments, CC: 96-98, Kahn Declaration, May 26, 1999

B. Switching functions

1. The description in the UNE Fact Report of how CLECs use alternative sources of switching clearly demonstrates that ILEC unbundled switching does not meet the "necessary" and "impair" standards from an economic perspective. There is therefore no economic basis for mandatory unbundling of these functions.

2. The UNE Fact Report describes how the local exchange switch and the associated rate exchange areas (or rate centers) constitute a basic building block of the ILEC network and examines the alternatives to ILEC switching available to CLECs at the rate center level. This examination produced the following findings.

- One third of the rate centers in RBOC/GTE territories are served by at least one CLEC switch.
- In contrast to ILEC networks, CLEC switches tend to serve multiple rate centers: the average CLEC switch serves 14. The "footprint" of these switches is even larger. For example, as the UNE Fact Report points out that (1) AT&T says its switches can serve customers within a 125 mile radius and (2) switch manufacturers document that a CLEC switch can serve customers up to 600 miles away. The UNE Fact Report reports also that a CLEC switch can serve customers throughout a LATA. This fact has two economically significant implications. First, CLECs can take advantage of economies of scale in switching by serving larger areas than are typically served by ILECs. Second, according to the calculations in the UNE Fact Report, CLEC switches now have 94 percent of all the RBOC/GTE rate centers within their reach.

- A rapidly increasing number of switches are being deployed by a large number of CLECs. Over 150 CLECs have deployed at least one. The total number has increased 10-fold in the last three years—from 65 before the Telecommunications Act was passed to over 700 switches by March 1999. The time necessary to install switches has decreased, with CLECs providing estimates in the range of 40 days to 28 weeks.

- In addition to standard local exchange switches, CLECs can obtain switching functions from other sources, including long-distance,[1] wireless, packet, and PBX switches. Indeed, the Commission recently described how switching can be provided by network equipment that serves other functions as well.[2]

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[1] For example, AT&T serves its larger business customers with Digital Link service, which connects these customers to its long-distance switches through high capacity connections.

[2] *See In re Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-147, FCC NO. 99-48, at pars. 27-31 (March 31, 1999) (discussing new telecommunications equipment, such as DSLAMs, routers, ATM multiplexers and remote switching modules, that combines switching and other functions).

Attachment 3

Bell Atlantic Comments CC: 96-98 Comments, Crandall Declaration, May 26, 1999

29. Switching. The Commission regularly surveys the degree to which CLECs with switches have obtained numbering codes for specific rate centers. The most recent number-assignment data collected by the Commission are now available through September 1998. However, the UNE Fact Report provides more recent data based on Telcordia's Local Exchange Routing Guide. Through March 1999, the Telcordia data show that at least one CLEC has NXX codes in more than one-third of all large ILEC rate centers and in 59 percent of Bell Atlantic centers. Because collocation occurs more frequently in the largest rate centers, the share of access lines that are now being served by CLEC switches is far greater than one-third. For example, in the MSAs in Bell Atlantic's region, the percentage of rate centers served by at least one CLEC is 99 percent for Boston, 78 percent for New York, 50 percent for Washington (DC), 88 percent for Baltimore, and 81 percent for Philadelphia.[1] Thus, it would appear that in most urbanized areas, CLECs are already utilizing their own switches or other non-ILEC switches and that ILEC switching is not a necessary element for entry.

[1] UNE Fact Report, Section I, Table 2.

30. There are even more alternatives for switching services than the CLEC switches that are rapidly being deployed -- particularly in urban areas. The IXCs have Class 4 switches deployed to handle their long-distance traffic, and these switches can easily be modified to handle incremental local traffic. For example, AT&T is utilizing its own switches in this fashion until it installs packet switches in its fiber-coax local network that it is building in its acquired cable television systems. In addition, there are now more than three thousand of wireless switches in use throughout the country, nearly 2500 of which are owned by carriers other than the large ILECs. Many of these switches are indistinguishable from ILEC end-office switches and could easily be used by CLECs. Finally, CLECs are now able to deploy switches extremely rapidly -- often in less than two months -- and at rapidly declining prices.

Bell Atlantic Ex Parte CC: 96-98 Originally filed August 24, 1999

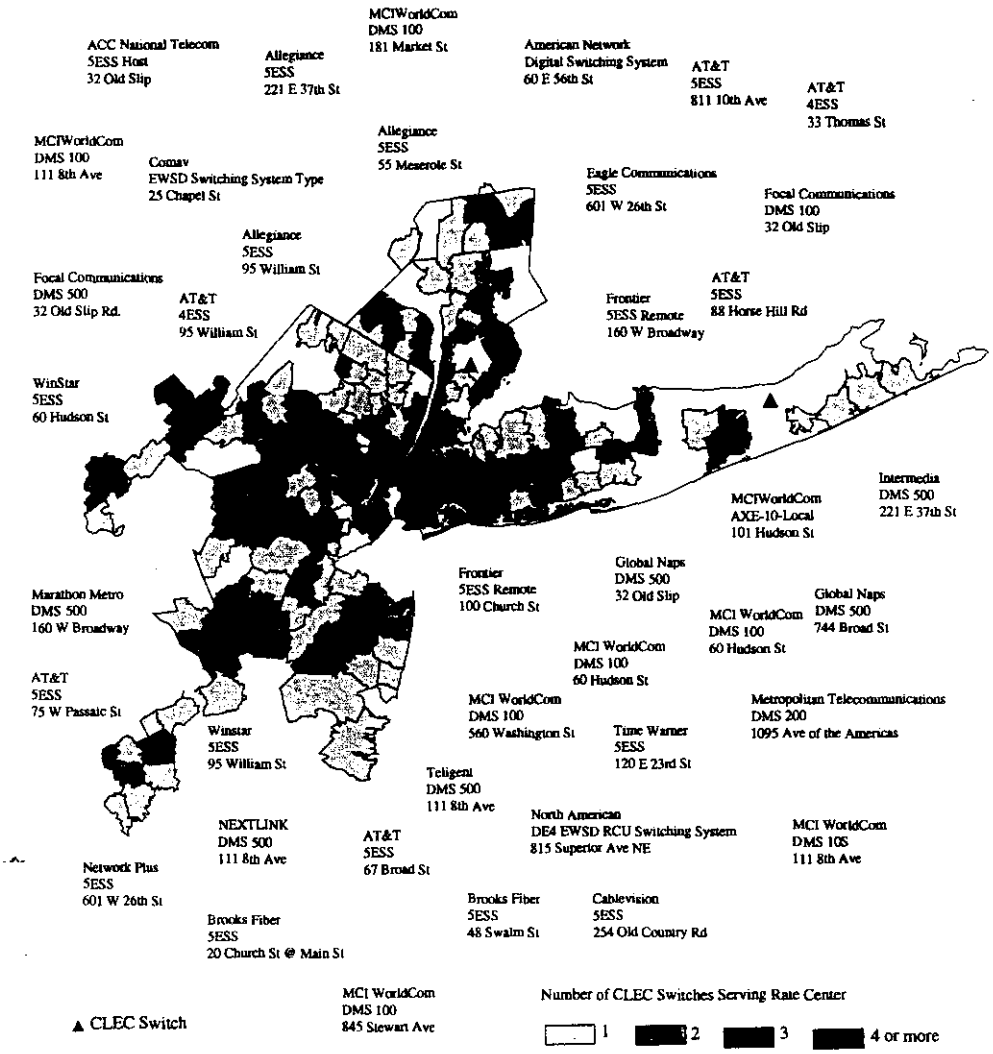
Much has changed since the Commission first established unbundling rules

- More than $30 billion has been invested in local competitors
- Local competitors have deployed hundreds of switches and millions of miles of fiber optic networks in major metropolitan areas
- Local competition is growing faster than long distance competition

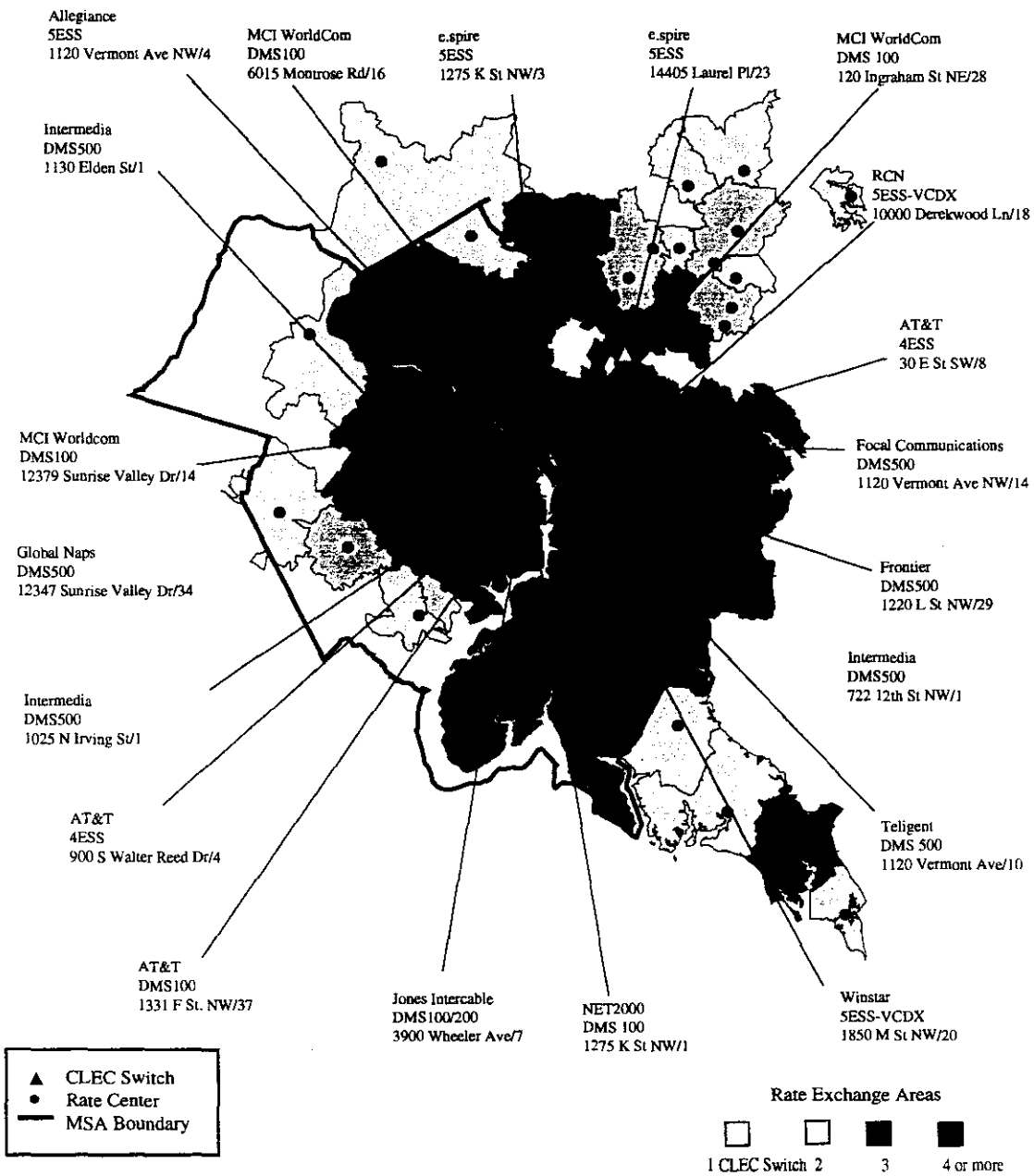
The Markets Where Local Switching Should Not Be Unbundled

- Over 160 competing carriers have already deployed over 700 of their own local switches, and more than 150 of these switches are located in the Bell Atlantic region.
- Competing carriers' switches can serve customers at least 600 miles away.
- Competing carriers have not had a problem raising capital for switches. "Focal was a start-up company with almost no business three years ago, yet Focal has been able to raise almost two hundred million dollars from venture capital and high-yield markets, and now provides metropolitan Chicago, New York, Boston, Washington, Los Angeles, San Francisco, and Philadelphia with services from seven operating switches, with additional facilities planned for the near future." Focal Comments, FCC Docket No. 96-98 at 4.
- Competing carriers have already obtained more than 4,500 NXX codes for their switches.
- Nearly 60 percent of rate exchange areas in the Bell Atlantic region have at least one competing carrier with its own switch and NXX code.
- At least 38 percent of Bell Atlantic's rate exchange areas have at least two carriers with their own switch and NXX codes.

CLEC Switches And Competitively Served Rate Centers In New York Metro



Map 2. CLEC Switches and Competitively Served Rate Centers
Washington, DC MSA



A. Bell Atlantic Reply Comments, CC: 96-98, June 10, 1999

B. The Commission Should Not Require Incumbents to Unbundle Local Switching In Rate Exchange Areas Where Competitors Already Have Telephone Numbers for Their Own Switches.

The evidence of competitors deploying their own local switches is both overwhelming and undeniable. Competitors have deployed over 700 switches throughout the country and those switches are handling billions of minutes of traffic each month. These competitors' switches are serving customers in more than one third of the exchange areas in the country – *and nearly two thirds of the exchange areas in the Bell Atlantic region*. *See* Exhibit 1 (national map of CLEC switches).

The new entrants that have invested in these switches see no reason for incumbent carriers to unbundle their local switching capabilities. MGC Communications, for example, explained that the requirement to unbundle local switching "may be extinguished with no adverse effects on the development of competition." MGC Comments at 30. MGC Communications has had no problem obtaining the local switching capacity it needs to provide competitive telecommunications services:

> MGC currently provides switched voice and data services through the deployment of Nortel DMS 500 switches. MGC does not need to acquire switching capability from the ILEC. The switches MGC has deployed are generally available to all CLECs to purchase from Nortel, Lucent, or any other third party switch vendor. Therefore, competitors are not dependent on the ILEC for switching.

MGC Comments at 31. Rhythms NetConnections Inc. said "it appears that because a new entrant can in many circumstances buy and use electronic switching systems on comparable terms and conditions from several different commercial vendors, a

competitor's ability to provide service would, in general, not be materially diminished by an inability to gain access to an ILEC's switch." Rhythms Comments at 27-28.

Likewise, a wide variety of facilities-based entrants and their representatives – ALTS, Allegiance, e.spire, Intermedia, Level 3 Communications, Inc., NextLink Communications, Inc., MediaOne Group, Inc., Cox Communications, Inc., and COVAD – made no request for the Commission to require unbundling of local switching. These carriers have already invested heavily in their own switching capacity and demonstrated that they are not impaired in their ability to provide competitive telecommunications service without the incumbents' unbundled local switching.

The record in this case already supports eliminating entirely any unbundling requirement for local switching. Competitors can expand the reach of their existing switches or deploy additional ones to serve virtually any customer in the country. But as Bell Atlantic pointed out in its opening comments, at a minimum, the Commission should take a balanced approach and eliminate an unbundling requirement for local switching in those areas where competitors are now using their switches to provide local services, or will do so shortly. These areas can readily be determined from the blocks of telephone numbers that have been assigned to competing carriers and published in the industry Local Exchange Routing Guide. *See* Bell Atlantic Comments at 23.

This middle ground is the same one advanced by the new entrant Focal Communications. As Focal explained, "it would contradict the Act's goal of furthering facilities-based competition to make ILEC unbundled switching compete with CLEC switching in the same area. . . . By limiting unbundled switching to areas where CLEC self-provisioning does not exist, the Commission would be honoring Congress' goal to

foster facilities-based competition." Focal Comments at 5. Focal then explained how these areas can be identified through the Local Exchange Routing Guide.

The best direct measure of whether CLEC switching is operationally available within a given area is the existence of a CLECs' NXX in the national LERG data base. Because every NXX has a geographic area associated with it (the "V&H"), the LERG provides a simple and objective test of the presence of CLEC switching in any area. Any ILEC receiving a request for unbundled switching should be allowed by the Commission's rules to exclude such an area from its obligation to provide unbundled switching.